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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ARNEL BISNAR et al.,

Plaintiffs and Respondents,

v.

BRIAN KINIRY et al.,

Defendants and Respondents;

GOLDEN EAGLE INSURANCE CORPORATION,

Intervener and Appellant.

F056128

(Super. Ct. No. 07C0459)

OPINION

APPEAL from a judgment of the Superior Court of Kings County. Thomas DeSantos, Judge.

Marderosian, Runyon, Cercone, Lehman & Armo, Michael G. Marderosian; Quinlan Kershaw & Ganucchi, David Michael Moeck; The Ehrlich Law firm and Jeffrey Isaac Ehrlich for Plaintiffs and Respondents.

Petrie, Dorfmeier & Morris, and Sean T. O'Rourke for Defendants and Respondents Brian Kiniry, Rebecca Kiniry and Northgate Apartments; Griswold LaSalle Cobb Dowd & Gin, and Michael Richard Johnson for Lemoore Real Estate and Property Management, Inc., Defendant and Respondent.

Lindahl Beck, Kelley Kurtis Beck for Intervener and Appellant.

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Appellant Golden Eagle Insurance Company ("appellant" or "Golden Eagle") appeals from the denial of its motion for leave to intervene in a wrongful death and negligent infliction of emotional distress action brought by relatives of five young persons who tragically perished in a July 28, 2007 fire at an apartment building managed by appellant's insured. Appellant filed its motion to intervene after appellant had refused to provide a defense to its insured, and after judgment had been entered against appellant's insured in the action.

Appellant contends that the trial court abused its discretion in denying appellant's motion for leave to intervene. As we shall explain, we find no abuse of discretion. We will affirm the superior court's denial of appellant's motion for leave to intervene.

FACTS

A fire at the Northgate Apartments in Lemoore, California after midnight on July 28, 2007 claimed the lives of Derik Faubion (age 19), Michell Mattison (age 19), Derik and Michell's 2-month-old daughter Hayden Allison Faubion, and Michell Mattison's two much younger siblings, sister Lexus May Bisnar (age 4) and brother Ariel Nel Bisnar (age 2). All of the decedents were in apartment No. 4, which had been leased to Derik Faubion. The fire marshall for the Kings County Fire Department concluded that the origin of the fire was "the patio of Apartment 3," which was directly below the apartment occupied by the decedents.

Two wrongful death actions were filed against the owners of the Northgate Apartments (Brian J. Kiniry and Rebecca J. Kiniry), and against the property management company that managed those apartments (Lemoore Real Estate and Property Management, Inc. ("Lemoore Real Estate")). In action 07C0459 the plaintiffs were Arnel Bisnar (father of 4-year-old Lexus and 2-year-old Ariel), Rizalda Poliquit (mother of those same two children and also of Michell Mattison, and grandmother of two-month-

old Hayden Allison Faubion) and Alan Mattison (father of Michell Mattison and grandfather of Hayden Allison Faubion). In action 07C0460 the plaintiffs were Bernadette Faubion (mother of Derik Faubion and grandmother of Hayden Allison Faubion), and Duncan and Sue Faubion (grandparents of Derik Faubion and great-grandparents of Hayden Allison Faubion). The actions were filed in October of 2007. In December of 2007 the parties to these actions stipulated that the actions be consolidated into one action for all purposes and that "only one set of findings of fact and conclusions of law, if any, and only one judgment shall be made."[1]

Defendant Lemoore Real Estate was insured by appellant Golden Eagle. On October 3, 2007 Golden Eagle sent a letter to Lemoore Real Estate stating "[i]f and when suit is filed in connection with this loss, we will hire counsel to defend the insured, however, as further explained below, GOLDEN EAGLE'S involvement in this matter is subject to our reservation of rights as explained further below." The letter went on to explain that Golden Eagle "intends to reserve its rights to contest, deny coverage," and

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1 For ease of reference we will refer to these two consolidated actions as "the wrongful death action." As we have already mentioned, they also included causes of action for negligent infliction of emotional distress ("NIED"). (See *Thing v. LaChusa* (1989) 48 Cal.3d 644, 667-668.) Evidence showed that the plaintiffs arrived at the scene of the apartment fire while the victims were still inside the apartment. Almost half of the judgment was awarded on the NIED causes of action ($13 million of the $29 million judgment). The trier of fact expressly found that each plaintiff was "present at the scene of the injury when it occurred, and was ... aware that [his or her relative or relatives] was being injured." (See *Thing v. LaChusa, supra*.) One of appellant's objectives in seeking leave to intervene post-judgment was to attack these findings as not supported by the evidence, and to do so by arguing that the plaintiffs were not entitled to recover any amount for NIED because the decedents had already expired by the time their relatives (the plaintiffs) arrived at the scene of the fire. We wish to be clear that we express no view on the merits of this argument. Rather, we conclude that the trial court did not err in denying appellant leave to intervene to present it after appellant could have, but did not, provide a defense to its insured in the wrongful death action. Appellant could have raised any defense argument it saw fit to make if appellant had elected to provide a defense to its insured.

further stated that Golden Eagle "DOES NOT WAIVE THE RIGHT TO LATER SEEK REIMBURSEMENT FROM THE INSURED FOR DEFENSE FEES AND COSTS, INDEMNITY PAYMENTS, OR ANY AMOUNTS PAID ON ITS BEHALF SHOULD IT LATER BE DETERMINED THAT THE CLAIMS ALLEGED IN THE LAWSUIT OR ANY OF THEM ARE EXCLUDED FROM COVERAGE." The wrongful death actions were filed the next day, October 4, 2007.

Notwithstanding what was said in Golden Eagle's October 3 letter, Golden Eagle did not in fact hire counsel to defend its insured. On or about October 22, 2007, Golden Eagle tendered the defense of Lemoore Real Estate to Magna Carta Companies. Golden Eagle's letter tendering the defense to Magna Carta Companies asserted that Lemoore Real Estate was included as an insured under a policy of insurance issued by Magna Carta Companies to the Kinirys (the owners of the apartment complex). Magna Carta Companies wrote to Golden Eagle on November 12, 2007 and stated that Golden Eagle's policy insuring Lemoore Real Estate "may be primary for both the defense and indemnity of Lemoore Real Estate in the referenced matter" and asked Golden Eagle to "[p]lease contact the undersigned at your earliest convenience so we can work out a cost sharing arrangement on the defense of Lemoore Real Estate ...." The record on appeal contains no indication that any cost sharing arrangement was ever reached between Golden Eagle and Magna Carta Companies.

On March 4, 2008, Golden Eagle's coverage counsel wrote to Lemoore Real Estate's counsel (apparently retained for Lemoore Real Estate by Magna Carta Companies) and informed Lemoore Real Estate that "[b]ased upon its analysis of the pleadings and policy, Golden Eagle has determined that the Professional Services Exclusion contained in its policy appears to eliminate any potential covered claim and therefore any duty to defend or indemnify." The letter further stated "[a]ccordingly, without prejudice to its prior reservation of rights or its dispute with Magna Carta Companies (acting for Public Service Mutual Insurance Company) that even if it had

applicable coverage it would be excess to the Public Service Mutual Insurance Company policy, Golden Eagle reserves the right to deny coverage, including any possible duty to defend, based upon its Professional Services Exclusion in its policy." Then in April of 2008 Golden Eagle filed a complaint for declaratory relief in which it sought a judicial declaration that had no duty to defend Lemoore Real Estate in the wrongful death action and had no obligation to indemnify Lemoore Real Estate for any judgment entered against Lemoore Real Estate in that action or for any amount which Lemoore Real Estate might agree to pay in settlement of the wrongful death action.

In May of 2008 the parties to the wrongful death action reached a settlement agreement in that action. Under the terms of that settlement agreement the parties agreed: (1) the wrongful death plaintiffs would receive $1 million from the Kinirys' insurer "which will be a credit and applied against any ultimate judgment awarded in this matter to Plaintiffs against defendants BRIAN J. KINIRY and REBECCA J. KINIRY"; (2) to have the Honorable Daniel S. Pratt (Ret.) appointed pursuant to Code of Civil Procedure section 638 to "hear and determine all of the issues in this lawsuit, whether of fact or of law";[2] (3) that referee Pratt's decision "will be a final and binding adjudication

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[2] Code of Civil Procedure section 638 states: "A referee may be appointed upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes, or upon the motion of a party to a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee if the court finds a reference agreement exists between the parties: [¶] (a) To hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision. [¶] (b) To ascertain a fact necessary to enable the court to determine an action or proceeding. [¶] (c) In any matter in which a referee is appointed pursuant to this section, a copy of the order shall be forwarded to the office of the presiding judge. The Judicial Council shall, by rule, collect information on the use of these referees. The Judicial Council shall also collect information on fees paid by the parties for the use of referees to the extent that information regarding those fees is reported to the court. The Judicial Council shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004."

on all issues in the Lawsuit and that a final judgment will be entered with the Court thereon"; (4) to "waive the right to appeal from the ultimate final judgment"; (5) Lemoore Real Estate would assign to the wrongful death plaintiffs any claims Lemoore Real Estate may have against Golden Eagle arising from Golden Eagle's "failure to defend, failure to settle, and/or failure to indemnify" Lemoore Real Estate in the wrongful death action; and (6) the wrongful death plaintiffs would not attempt to satisfy the judgment from "any asset or property of" the Kinirys or Lemoore Real Estate.

Pursuant to the settlement agreement, Judge Pratt was appointed as referee, heard the matter on June 27, 2008, took the matter under submission, and then issued his decision on July 8, 2008. Counsel for Golden Eagle was invited to the June 27 hearing and in fact attended that hearing. Judge Pratt's decision awarded the six plaintiffs a total of $29 million in damages, with $16 million awarded on the wrongful death causes of action and $13 million awarded on the NIED causes of action. Judge Pratt apportioned fault 90 percent to Lemoore Real Estate and 10 percent to the Kinirys. The court entered judgment on that same day (July 8, 2008) in accordance with Judge Pratt's findings.

Golden Eagle learned of Judge Pratt's decision on the day it was made. Golden Eagle filed its post-judgment motion for leave to intervene on July 23, 2008. The court heard the motion on August 15, took the matter under submission, and denied the motion on August 28.

DISCUSSION

"Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding." (Code Civ. Proc. § 387, subd. (a).) In some instances a right to intervene is provided for by statute. "If any provision of law confers an unconditional right to intervene ... the court shall, upon timely application, permit that person to intervene." (Code Civ. Proc., § 387, subd. (b); see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2010), ¶¶ 2:401 -

2:413.1, pp. 2-63 to 2-66 (rev. #1 2010).) In other situations, such as in the matter presently before us, intervention is permissive and the court exercises its discretion in determining whether a nonparty may be permitted to intervene. "Pursuant to [Code Civ. Proc.] section 387 the trial court has discretion to permit a nonparty to intervene where the following factors are met: (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action." (*Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386; in accord, see also *Truck Ins. Exchange v. Superior Court* (1997) 60 Cal.App.4th 342, 346; *Noya v. A.W. Coulter Trucking* (2006) 143 Cal.App.4th 838, 842; *Hinton v. Beck* (2009) 176 Cal.App.4th 1378, 1382-1383; *Gray v. Begley* (2010) 182 Cal.App.4th 1509, 1521.) "The [intervention] statute protects the interests of others affected by the judgment, obviating delay and multiplicity. [Citations.] Counterbalancing this purpose is the interest of the original parties in pursuing their litigation unburdened by others. [Citation.]" (*People v. Superior Court* (*Good*) (1976) 17 Cal.3d 732, 736.) The trial court possesses discretion to deny intervention even when a direct interest is shown if the interests of the original litigants outweigh the concerns of the interveners. (*Id.* at p. 737; in accord, see *In re Marriage of Kerr* (1986) 185 Cal.App.3d 130, 134.)

"An order denying intervention is directly appealable because it finally and adversely determines the right of the moving party to proceed in the action." (*Bame v. City of Del Ma*r (2001) 86 Cal.App.4th 1346, 1363; in accord, see also *Bowles v. Superior Court* (1955) 44 Cal.2d 574, 582 and 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 110, pp. 174-175.) An appellate court "reviews an order denying leave to intervene under the abuse of discretion standard." (*Reliance Ins. Co. v. Superior Court*, *supra*, 84 Cal.App.4th at p. 386.) This standard is "deferential." (*Noya v. A. W. Coulter Trucking*, *supra*, 143 Cal.App.4th at p. 842.) "Where ... a discretionary power is

inherently or by express statute vested in the trial judge, his or her exercise of that wide discretion must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) Similarly, it has been said that discretion is abused only "whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered." (*City of Malibu v. California Coastal Com*. (2005) 128 Cal.App.4th 897, 906.)

Here, the trial court determined that the interests of the parties to the wrongful death action outweighed the interests of Golden Eagle in seeking to intervene. The court's ruling denying leave to intervene stated in part: "[i]t appears that Golden Eagle's sole reason for intervention is to secure a right to challenge the final Judgment despite its insured's express waiver of such right in the Settlement Agreement." This certainly seems to be an accurate observation. Appellant did not seek to "enlarge" the issues in the litigation by adding new issues. Rather it sought to relitigate issues already decided. Appellant wished to intervene so that it could file its proposed motion for a new trial. Appellant's proposed motion, which appellant included in its motion for leave to intervene, sought "a new trial as to apportionment of fault and the determination of damages." These were of course precisely the issues decided by the referee pursuant to the settlement agreement entered into by the parties to the wrongful death action. If the referee had decided that Lemoore Real Estate was not at fault for the deaths, and if judgment had been entered accordingly, appellant would have been satisfied that its interests had been protected. Only after appellant's insured received a result appellant deemed unfavorable to the insured (and unfavorable to the interests of Golden Eagle itself as Lemoore Real Estate's insurer) did appellant seek to intervene.

Appellant's argument is in essence an argument that the defense which was provided to its insured by another insurer could have been done better, and that appellant should now be permitted to intervene to attempt to persuade the court to reach a result

more favorable to Lemoore Real Estate on the issues of liability and damages. Appellant argues that if it were permitted to intervene, its "intervention would not void or contradict any terms of the [settlement] agreement." This might be literally true, in the sense that an order permitting intervention would not automatically void the judgment that was reached pursuant to the procedure provided for in the settlement agreement. The very purpose of appellant's proposed intervention, however, is to attack the judgment that was reached pursuant to the procedure provided for in the settlement agreement. Appellant's objective in seeking to intervene is precisely to deprive parties to the agreement of the benefits of that agreement. That agreement provided that the ruling of the referee would be final. Appellant provided the trial court with no good reason why appellant should be permitted to intervene in the wrongful death action. If appellant had no duty to defend or indemnify Lemoore Real Estate in the wrongful death action (a position appellant has asserted in another action it filed and in which it sought a judicial declaration that it had no such duty to defend or indemnify), then appellant would have no liability to the wrongful death plaintiffs in any action brought against appellant by those plaintiffs. If appellant had a duty to provide a defense to Lemoore Real Estate in the wrongful death action and did so, or even if appellant was unsure about any duty to defend but provided a defense under a reservation of rights, appellant could have controlled that defense and could have conducted that defense in any manner it deemed appropriate.

"[A]n insurer who denies coverage and refuses to defend its insured does not have a direct interest in the litigation between the plaintiff and the insurer to warrant intervention. The rationale behind this rule is that by its denial, the insured has lost its right to control the litigation." (*Hinton v. Beck*, *supra*, 176 Cal.App.4th at p. 1384; in accord, see *Gray v. Begley*, *supra*, 182 Cal.App.4th at p. 1522.) As the trial court here found, on the undisputed evidence presented to it, appellant did not provide a defense to its insured, Lemoore Real Estate. Lemoore Real Estate's defense was provided by another insurer. The fact that Lemoore Real Estate was provided a defense by another

insurer, and thus was not "without a defense," does not shield appellant from the application of this rule. "Where more than one insurer has a duty to defend an insured, each insurer's duty is 'separate and independent from the others ....' [Citation]." (*Risely v. Interinsurance Exchange of the Automobile Club* (2010) 183 Cal.App.4th 196, 210.) Both sides present substantial argument as to whether Golden Eagle did or did not breach a duty to provide a defense to its insured. That issue may be pertinent to Golden Eagle's declaratory relief action, and to any action brought by Lemoore Real Estate's assignees against Golden Eagle, but it is not pertinent to the order we are reviewing here. The important point here is simply that appellant, whether rightly or wrongly, did not provide that defense. We are not here concerned with whether Golden Eagle had or did not have, or breached or did not breach, a duty to defend its insured. Regardless of whether appellant did or did not have a duty to defend its insured in the wrongful death action, appellant had an opportunity to provide such a defense, chose not to do so, and thus "lost its right to control the litigation" (*Hinton v. Beck*, *supra*, 176 Cal.App.4th at p. 1384) and "does not have a direct interest in the litigation between the plaintiff and the insured to warrant intervention." (*Id.* at p. 1381.)

The trial court relied on dicta in *Noya v. A.W. Coulter Trucking*, *supra*, to conclude that appellant had a direct and immediate interest in the wrongful death action because the possibility existed that Golden Eagle's declaratory relief action might be unsuccessful, and Golden Eagle "may ultimately be required to pay the judgment against" its insured. (*Noya*, *supra*, 143 Cal.App.4th at p. 842.) Even under the assumption that appellant had a direct and immediate interest in the wrongful death action, however, the trial court still found the interests of the parties to the wrongful death action to outweigh the interests of Golden Eagle, and denied intervention. This was not an abuse of discretion. "[T]he denial of coverage and a defense entitles the policyholder to make a reasonable, noncollusive settlement without the insurer's consent and to seek reimbursement for the settlement amount in an action for breach of the covenant of good

faith and fair dealing. [... [T]he policyholder denied a defense for covered claims by its liability insurer may make a reasonable settlement with the plaintiff, in good faith, and then maintain (or assign) an action against the insurer for breach of its defense duties." (*Hamilton v. Maryland Casualty Co*. (2002) 27 Cal.4th 718, 728.) Appellant made no contention in the present case that its insured's settlement of the wrongful death action was collusive. Even if appellant might be of the view that the settlement was collusive, and refrained from raising that issue so as to avoid having its motion to intervene being viewed as an attempt to enlarge the issues in the wrongful death action, appellant can still raise a defense of collusion in any action brought against appellant by its insured's assignees. (*Safeco Ins. Co. of America v. Parks* (2009) 170 Cal.App.4th 992, 1013-1015; *Pruyn v. Agricultural Ins. Co*. (1995) 36 Cal.App.4th 500; *Andrade v. Jennings* (1997) 54 Cal.App.4th 307; see also Croskey et al. Cal. Practice Guide: Insurance Litigation (The Rutter Group 2009), §§ 12:1184-1185 at pp. 12D-21 to 12D-22 (Rev. #1 2009) and 12:507-512.10 at pp. 12B-69 to 12B-72 (Rev. #1 2009).)

Appellant argues that the trial court erred in concluding appellant's motion to intervene was untimely. It is clear, however, that the court found no statutory bar to the timeliness of appellant's motion. In other words, the court was of the view that the court had discretion to grant or deny the motion. The timing of the motion was simply another factor considered by the court in determining that the interests of the litigants in preserving the benefits of their settlement agreement outweighed the interests of the proposed intervener (appellant) in the latter's attempt to attack the judgment that was reached pursuant to the procedure agreed to in the settlement agreement. Thus, even if we assume the court had discretion to grant the motion for leave to intervene (but see *Hinton v. Beck*, *supra*, and *Gray v. Begley*, *supra*), we can find no abuse of that discretion here. There is no statutory bar to granting leave to intervene after a judgment has been entered. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 437.) The statute requires, however a "timely application" for leave to intervene (Code Civ. Proc., § 387,

subd. (a)), and the court may take into consideration whether the proposed intervener unreasonably delayed a request to intervene. (*Allen v. California Water & Tel. Co*. (1947) 31 Cal.2d 104, 108; *Noya v. A.W. Coulter Trucking*, *supra*.) Appellant argues that it did not learn until the day of the referee's decision (July 8, 2007) of the contents of the settlement agreement. It is clear, however, that appellant was invited to attend and did send its counsel to attend the trial by reference, and knew there was a settlement agreement. Appellant was clearly on notice that there was a possibility the parties might have agreed the proceeding before Judge Pratt would be binding. Appellant displayed no interest in the defense strategy utilized by its insured (and provided by another insurer) in the wrongful death action until appellant learned of the final result in the wrongful death action. Under these circumstances, the trial court could reasonably conclude that appellant's interest in Monday morning quarterbacking did not outweigh the interests of the parties to the litigation in reaching a final resolution of that litigation.

Appellant cites *Truck Ins. Exchange v. Superior Court*, *supra*, and argues "timeliness is hardly a reason to bar intervention when a direct interest is demonstrated and the real parties in interest have not shown any prejudice other than being required to prove their case." (*Truck Ins. Exchange v. Superior Court*, *supra*, 60 Cal.App.4th at p. 351.) In that case the insured had three insurers. The insured's corporate status was suspended by the state due to the insured's failure to file state tax returns. Claims were made against the insured. Two of the insured's insurers sued the insured for rescission of their policies of insurance with the insured. The suspension of the insured's corporate status barred it by law from appearing in court to defend itself. (Rev. & Tax Code, § 23301.) Without a defense, and without intervention by *Truck*, the other two insurance policies would have been rescinded by default, and *Truck* would potentially have had to pay claims made against its insured without any possibility of contribution from the other two insurers. The trial court denied *Truck*'s motion for leave to intervene. The appellate court found an abuse of discretion and reversed. "If Truck is not permitted to intervene,

it will have no opportunity to prove that Transco and Alpine are coinsurers of [the insured]. Permitting Truck to intervene and putting Transco and Alpine to their proof will simply bar them from unilaterally obtaining a judicial determination that their policies are rescinded. The intervention certainly will not foreclose the possibility that they will prevail but will force them to prove their case." (*Truck Ins. Exchange, supra,* 60 Cal.App.4th at p. 349.) We do not find *Truck* to be helpful to appellant in the case presently before us because here the plaintiffs have already had to prove their case in the trial by reference before Judge Pratt, a retired judge with 20 years of judicial experience. Appellant sought to intervene with the objective of requiring the plaintiffs to prove their case a second time.[3]

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[3] Appellant has filed a motion in this court asking us to take judicial notice of (1) a first amended complaint filed by Lemoore Real Estate's assignees in an action against Golden Eagle, (2) a memorandum of points and authorities filed by those assignees in opposition to a demurrer filed by Golden Eagle in that action, and (3) the court's ruling on the demurrer in that action. These documents were not presented to or considered by the trial court in connection with Golden Eagle's motion to intervene in the matter presently before us, and in fact did not yet exist at the time Golden Eagle's motion for leave to intervene was filed or ruled upon. The court's order denying Golden Egale's motion for leave to intervene was made on August 28, 2008. The first amended complaint in the assignees' action shows that it was filed more than nine months later on June 15, 2009. Nor do we see how these documents would be of any assistance to us in deciding the present appeal. It is clear from the settlement agreement in the wrongful death action that Lemoore Real Estate assigned its claims against Golden Eagle to the wrongful death plaintiffs. That those assignees would then in fact file an action against Golden Eagle comes as no surprise. "'Reviewing courts generally do not take judicial notice of evidence not presented to the trial court' absent exceptional circumstances. [Citation.] 'It is an elementary rule of appellate procedure that, when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered. [Citation.] This rule preserves an orderly system of [litigation] by preventing litigants from circumventing the normal sequence of litigation.' [Citation.] No exceptional circumstances appear that would justify deviating from this general rule in the present case …." (*Haworth v. Superior court* (2010) 50 Cal.4th 372, 379, fn. 2; see also *Vons Companies, Inc. v. SeabestFoods, Inc*. (1996) 14 Cal.4th 434, 444, fn. 3; and *People v. Preslie* (1977) 70

DISPOSITION

The trial court's order denying appellant's motion for leave to intervene is affirmed. Costs to respondent.

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Ardaiz, P.J.

WE CONCUR:

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Cornell, J.

_____
Kane, J.

Cal.App.3d 486, 492.) Appellant's "Motion to Take Judicial Notice of Pleadings and Order in Related Case," filed in this court on January 22, 2010, is denied.